

HOUSE No. 1469

By Ms. Fox of Boston, petition of Gloria L. Fox and Byron Rushing relative to the establishment of a program to assist certain small businesses in areas affected by transportation enhancement activities of the Massachusetts Bay Transportation Authority. Community Development and Small Business.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO A PROGRAM TO ASSIST CERTAIN SMALL BUSINESSES
IN AREAS AFFECTED BY TRANSPORTATION ENHANCEMENT ACTIVITIES
OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter five hundred and eighty-five of the acts
2 of nineteen hundred and eighty-six is hereby repealed.

1 SECTION 2. It is hereby found and declared that certain activi-
2 ties undertaken from time to time by the Massachusetts Bay
3 Transportation Authority, hereinafter referred to as “the authority”,
4 in order to construct, reconstruct, renovate, repair, remove,
5 replace, or expand transportation facilities in the public interest,
6 may provide opportunities to stabilize, develop, and revitalize the
7 economy of the areas in which such activities are undertaken; that
8 the stabilization, development, or revitalization of small busi-
9 nesses in such areas would improve the general health, safety and
10 welfare of such areas while also increasing the value and use of
11 the public investment in the transportation facilities in such areas;
12 that to achieve these benefits it may be necessary to stimulate pri-
13 vate investment in such areas; that the stabilization, development,
14 or revitalization of such areas may not be dealt with effectively by
15 the ordinary operations of private enterprise without the aids pro-
16 vided herein; that without such aids the construction or other
17 activities may have a significantly harmful impact on the eco-
18 nomic stability and growth of small businesses in such areas; and

19 that the use of public funds to stimulate private investment in such
20 businesses and areas as provided herein is a valid public purpose.

1 SECTION 3. (a) There is hereby established a board to oversee
2 a pilot program to assist businesses affected by transportation
3 enhancements, hereinafter referred to as “the board”. The board
4 shall consist of the secretary of transportation and construction, or
5 his designee, the secretary of economic affairs, or his designee,
6 and the commissioner of banks and banking, or his designee. All
7 official actions of the board must be approved by a majority of its
8 members. The board is hereby authorized and directed to promul-
9 gate rules or regulations pursuant to section two of chapter thirty
10 A of the General Laws to establish standards or criteria for the
11 designation of transportation activity affected areas pursuant to
12 paragraph (b), under which business entities may be qualified
13 small businesses pursuant to paragraph (c), and for the evaluation
14 of proposals for and performance under agreements entered into
15 pursuant to paragraph (d), or for any other purpose necessary to
16 implement the provisions of this section.

17 (b) The board may designate a specific geographic area to be a
18 “transportation activity affected area”. An area may be so desig-
19 nated if: (1) the authority is undertaking transportation enhance-
20 ment activities including the construction, reconstruction,
21 renovation, repair, removal, replacement, or expansion of its
22 transportation facilities within the area; (2) such activities have
23 had or are likely to have a significantly harmful impact upon the
24 economic stability and growth of small businesses within such
25 area; and (3) the area meets such other standards and criteria as
26 the board may establish.

27 (c) a “qualifying small business” shall mean a for profit or non-
28 profit business entity that is located, wholly or partially, within a
29 designated transportation activity affected area; that alone or in
30 combination with any affiliated businesses entity had average
31 gross sales of less than two million five hundred thousand dollars
32 per year for its most recent two fiscal years and that has fewer
33 than fifty full-time equivalent employees; that has been doing
34 business within a transportation activity affected area for at least
35 one year prior to the commencement of transportation enhance-
36 ment activities by the authority within the designated area; that

37 has been or is likely to be significantly harmed by the transporta-
38 tion enhancement activities of the authority within the transporta-
39 tion activity affected area; and that meets such other standards and
40 criteria as the board may establish.

41 For the purposes of this section, business entities shall be con-
42 sidered to be affiliated if they are controlled, either through own-
43 ership or management, by the same party or parties.

44 (d) The authority is hereby authorized to enter into agreements
45 with banks to stimulate loans to qualifying small businesses. For
46 the purposes of this section, banks shall be deemed to include any
47 bank subject to taxation under section two of chapter sixty-three
48 of the General Laws. Banks shall be selected by the authority for
49 participation in this pilot program after a competitive bidding
50 process which shall include public advertisement and the receipt
51 of written bids. The actual selections shall be based upon stan-
52 dards and criteria that shall include the interest rate the bank will
53 pay the authority for its deposits, the interest rate the bank will
54 charge to participating qualifying small businesses, and such other
55 standards and criteria as the board may establish. Such agreements
56 shall provide that: (1) the authority shall deposit in such bank pur-
57 suant to paragraph (f), funds which may earn no interest, below
58 market rate interest, or market rate interest during periods when
59 such funds are used to stimulate loans to qualifying small busi-
60 nesses as provided herein; (2) in consideration of such deposits
61 such bank shall make loans to qualifying small business pursuant
62 to paragraph (e) at interest rates below the rates such bank would
63 otherwise charge on such loans; (3) such deposits and loans as a
64 whole shall be structured in such a way that the total value of any
65 reduction in interest earnings to the authority resulting from the
66 deposit of funds at no interest or at below market rate interest,
67 minus any extraordinary administrative costs incurred by such
68 bank beyond the costs that would normally be incurred in making
69 such a loan other than pursuant to this section, shall not be greater
70 than the total value of any reduction in interest costs to qualifying
71 small businesses resulting from the receipt of any such loan at
72 below market rate interest; (4) if the total value of any such reduc-
73 tion in interest earnings, minus any such extraordinary administra-
74 tive costs, exceeds the total value of any such reduction in interest
75 costs, such excess shall be rebated to the authority; (5) such bank

76 may secure the payment of principal and interest on any loan
77 granted pursuant to this section by mortgage, security interest, or
78 any other method; (6) upon the finding by the board that such
79 bank has substantially failed to meet the conditions of the agree-
80 ment the board may rescind such agreement and shall require the
81 rebate of any excess owed the authority at that time under
82 clause (4) and the return of any deposits made under clause (1).

83 (e) Banks entering into an agreement under paragraph (d) shall
84 make loans to qualifying small businesses pursuant to such agree-
85 ment. Such businesses may use the proceeds of any such loan for
86 the costs of renovation, modernization, expansion, maintenance,
87 inventory purchases or related capital improvements but may not
88 use such proceeds for any operating costs. The factors to be con-
89 sidered by a bank in granting a loan pursuant to this section shall
90 include, but need not be limited to: (i) the degree and severity of
91 the impact of the transportation construction activity of the
92 authority on the economic stability and growth of the applicant
93 qualifying small business and the resulting effect on the use of
94 mass transportation facilities in such area, (ii) the degree to which
95 the loan shall assure the economic stability and growth of the
96 applicant qualifying small business and of the designated area and
97 will increase the value and use of mass transportation facilities in
98 such area, (iii) the ability of the applicant qualifying small busi-
99 ness otherwise to obtain financing at reasonable rates and upon
100 reasonable terms, and (iv) the period of time the business has
101 operated in the area and the period of time it has been owned by
102 the applicant.

103 (f) Notwithstanding any general or special law to the contrary,
104 the authority is hereby authorized to deposit any of its funds with
105 banks at no interest or below market rate interest for the purposes
106 and in the manner set forth in this section; provided, however, that
107 no funds that were in any way made available because of a pledge
108 of the credit of the commonwealth may be so deposited for said
109 purposes, provided, further that in no event shall funds of the
110 authority be used as security for loans granted pursuant to this
111 section and no such loan shall be guaranteed by the authority. At
112 no time shall the authority have on deposit with such banks in
113 excess of seven million five hundred thousand dollars for said
114 purposes.

115 (g) Within sixty days from the end of each calendar year after
116 2005; the authority shall submit a report relative to said pilot pro-
117 gram that has been approved by the board to the clerks of the
118 senate and of the house of representatives, to the house and senate
119 committees on ways and means, to the commissioner of adminis-
120 tration, and to the inspector general, who is hereby authorized
121 thereafter similarly to submit his comments on such report. The
122 report shall include, but need not be limited to:

123 (1) a listing of any designated transportation activity affected
124 area; (2) an accounting of any funds deposited by the authority
125 pursuant to this section and of the value of any reduced interest
126 earnings to the authority resulting from each deposit of authority
127 funds at no interest or at below market rate interest; (3) an
128 accounting of the value of any reduced interest costs to qualifying
129 small businesses resulting from receiving loans stimulated by each
130 such deposit at below market rate interest; (4) an accounting of
131 any extraordinary administrative costs allowed to a bank for each
132 deposit; and (5) an accounting of an excess related for each
133 deposit to the authority pursuant to clause (4) of paragraph (d) of
134 section two.

1 SECTION 4. The provisions of sections two and three shall
2 cease to be in effect as of December thirty-first, two thousand and
3 eight. No loans shall be made pursuant to paragraph (e) of section
4 two after December thirty-first, two thousand and five. Nothing in
5 this section shall be construed to prevent the collection of any out-
6 standing principal or interest on loans made pursuant to said para-
7 graph (3) on or before December thirty-first, two thousand and
8 five or of any outstanding excess owed to the authority under
9 clause (4) of paragraph (d) of section two.